

In re:

Layfield & Barrett, APC

Debtor

Case No. 17-19548-NB

Chapter 11

District/off: 0973-2

User: admin

Page 1 of 4

Date Rcvd: Jul 20, 2021

Form ID: pdf042

Total Noticed: 1

The following symbols are used throughout this certificate:

Symbol Definition

- + Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jul 22, 2021:

NONE

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI). Electronic transmission is in Eastern Standard Time.

Recip ID	Notice Type: Email Address	Date/Time	Recipient Name and Address
db	+ Email/PDF: phil@maximum.global	Jul 21 2021 07:25:00	Layfield & Barrett, APC, 2720 Homestead Rd Ste 210, Park City, UT 84098-4887

TOTAL: 1

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jul 22, 2021

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on July 20, 2021 at the address(es) listed below:

Name	Email Address
------	---------------

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James KT Hunter

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5 Attorneys for Richard M. Pachulski,
6 Chapter 11 Trustee

FILED & ENTERED

JUL 20 2021

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY sumlin DEPUTY CLERK

6 UNITED STATES BANKRUPTCY COURT

7 CENTRAL DISTRICT OF CALIFORNIA

8 LOS ANGELES DIVISION

10 In re:

11 LAYFIELD & BARRETT, APC,

12 Debtor.

Case No.: 2:17-bk-19548-NB

Chapter 11

13 **ORDER DENYING MOTION FOR
14 RELIEF FROM THE AUTOMATIC
15 STAY UNDER 11 U.S.C. § 362, FILED BY
16 JOSEPH BARRETT AND THE
17 BARRETT LAW FIRM**

18 Date: July 20, 2021

19 Time: 1:00 p.m.

Place: United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street
Courtroom 1545

Judge: Honorable Neil W. Bason

20 The Court having considered the *Motion for Relief From the Automatic Stay Under 11 U.S.C.*
21 *§ 362 (with supporting declarations) (ACTION IN NONBANKRUPTCY FORUM)* [Docket No. 567]
22 (the “Motion”) and related reply papers [Docket No. 573], filed by Joseph Barrett and The Barrett
23 Law Firm (collectively, the “Movants”), the *Opposition of Richard M. Pachulski, Chapter 11*
24 *Trustee, to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362, filed by Joseph Barrett*
25 *and The Barrett Law Firm* [Docket No. 570] (the “Opposition”) and supporting Request for Judicial
26 Notice [Docket No. 572], filed by Richard M. Pachulski, the duly appointed chapter 11 trustee (the
27 “Trustee”) in the above-captioned bankruptcy case of Layfield & Barrett, APC; having determined
28 that Movants have failed to demonstrate “cause” to grant relief from the automatic stay pursuant to 11

1 U.S.C. § 352(d)(1); and having indicated as part of its tentative ruling regarding the Motion (the
2 Tentative Ruling) that appearances were not required at the hearing scheduled regarding the
3 Motion and counsel for Movants having failed to timely advise the Court and counsel for the Trustee
4 of any intent to contest the Tentative Ruling in accordance with section III.D.2. of the Court's Posted
5 Procedures,

6 **IT IS HEREBY ORDERED** that

7 1. The Motion is DENIED for the reasons set forth in the Tentative Ruling, a true and
8 correct copy of which is attached hereto as **Exhibit "A"**, which ruling is hereby
9 incorporated as the Court's final ruling.

10 2. The Court shall retain jurisdiction to hear and determine all matters arising from or
11 relating to this Order.

12 # # #

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

23 Date: July 20, 2021

24 
Neil W. Bason
United States Bankruptcy Judge

EXHIBIT A

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, July 20, 2021

Hearing Room 1545

1:00 PM

2:17-19548 Layfield & Barrett, APC

Chapter 11

#3.00 Hrg re: Motion for relief from stay [NA]

**JOSEPH MARTIN BARRETT
vs
DEBTOR**

Docket 567

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 4, 7/20/21 at 1:00 p.m.).

Party Information

Debtor(s):

Layfield & Barrett, APC Pro Se

Movant(s):

Joseph Martin Barrett Represented By
Damion Robinson

Trustee(s):

Richard Pachulski (TR) Represented By
Malhar S Pagay
James KT Hunter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, July 20, 2021

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#4.00 Cont'd Status Conference re: Chapter 11 Case
fr. 9/19/17, 10/17/17, 4/17/18, 5/1/18, 7/10/18, 9/18/18,
10/26/18, 12/6/18, 12/18/18, 2/5/19, 03/05/19, 04/02/19
04/30/19, 06/04/19, 7/30/19, 9/10/19, 10/1/19, 10/15/19,
11/12/19, 12/10/19, 12/17/19, 2/18/20, 3/3/20, 03/31/20,
8/4/20, 9/1/20, 9/15/20, 12/8/20, 5/4/21

Docket 323

Tentative Ruling:

Tentative Ruling for 7/20/21:

Appearances are not required on 7/20/21.

(1) Current matters

(a) Related proceedings

The matters on calendar involve two related bankruptcy cases and associated matters: (a) *In re Layfield & Barrett, APC*, Case No. 2:17-bk-19548-NB ("L&B"); (b) *In re Layfield*, Case No. 2:18-bk-15829-NB ("Lay-Invol."); (c) *Pimentel v. Layfield et al*, Case No. 2:19-ap-01069-NB ("Pimentel Adv."), (d) *Pachulski v. Layfield*, Case No. 2:19-ap-01071-NB ("Pachulski Adv.").

(b) Motion for relief from the automatic stay (action in nonbankruptcy forum) (dkt. 567, the "R/S Motion") filed by Joseph Barrett and the Barrett Law Firm (collectively, "Barrett"), Trustee's opposition (dkt. 570) & request for judicial notice (dkt. 572), Barrett's reply (dkt. 573)

The tentative ruling is to deny the R/S Motion, for the reasons stated in the Trustee's opposition papers, except as follows. The Trustee is directed to address whether there is a way to grant Barrett access to L&B's records, with appropriate safeguards and at minimal expense, so as to reduce the risk of potential prejudice to Barrett in having to defend the State Courts without the benefit of obtaining discovery from L&B.

Additional analysis:

Without limiting the generality of the tentative ruling to adopt the reasons set forth in the Trustee's Opposition, this Bankruptcy Court highlights

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Central District of California
Los Angeles
Judge Neil Bason, Presiding
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CONT... Layfield & Barrett, APC

Chapter 11

the following issues. The Bankruptcy Court "shall grant relief from the stay" upon a showing of "cause." 11 U.S.C. 362(d)(1). "'Cause' is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir.1990).

In determining whether "cause" exists to grant relief from the automatic stay to allow a movant to pursue litigation in a non-bankruptcy forum, courts in the Ninth Circuit have examined the factors set forth in *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984). See *In re Kronemeyer*, 405 B.R. 915 (9th Cir. BAP 2009); *In re Plumberex Specialty Prods., Inc.*, 311 B.R. 551, 559–60 (Bankr. C.D. Cal.2004). Those factors have been set forth in the parties' papers. "[W]hile the *Curtis* factors are widely used to determine the existence of 'cause,' not all of the factors are relevant in every case, nor is a court required to give each factor equal weight." *In re Landmark Fence Co., Inc.*, 2011 WL 6826253 at *4 (C.D. Cal. Dec. 9, 2011).

Barrett's reply argues that, just as this Bankruptcy Court granted relief from the automatic stay for Mr. Pimentel to be able to litigate against affiliated debtor Mr. Layfield, Barrett should be granted relief from the automatic stay to litigate against L&B. Reply (dkt.573), p.2:5-23. Although there are certainly parallels, there are some major differences between the two situations.

First, Mr. Layfield is an individual who can defend himself if he lacks the resources to hire an attorney in the *Pimentel* action in State Court, whereas L&B is an entity that can only appear through counsel. So granting the R/S Motion would require either that someone pay for an attorney for L&B or alternatively that L&B default. Either scenario would "prejudice the interests of other creditors" and also (in this administratively insolvent estate) administrative claimants. See Opp.(dkt.570), *passim*, and Reply, p.5 n.2 (quoting, *inter alia*, 7th *Curtis* factor).

Second, any alleged prejudice to Barrett from not having L&B as a cross-defendant appears to be more hypothetical than real. For one thing, there is no assurance that the State Courts would permit Barrett to add L&B as a cross-defendant at this apparently late stage. For another thing, all organizations can only act through individuals, and Barrett remains free to subpoena any individuals through whom L&B acted, such as any bookkeepers, any office managers, and any attorneys involved in the Pimentel matter or involved in management of L&B's finances, including Mr. Layfield

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CONT...

Layfield & Barrett, APC

Chapter 11

(subject to any automatic stay, discharge injunction, Fifth Amendment privilege, or similar limitation). As for any claim that Barrett might have against L&B, Barrett has the same rights as any other creditor to file a proof of claim and, if the estate ever has any assets, receive his share.

Third, although Barrett asserts that he/it will suffer harm or prejudice if L&B is not required to defend them and Mr. Barrett is forced to "fund his own defense" (Reply, dkt.573, pp.3:20-4:2), Barrett has not cited any authority that a debtor in bankruptcy is required to expend resources (as an administrative priority) to pre-pay such indemnity claims. To the contrary, as noted by the L&B Trustee, elevating Barrett's claim for indemnity to an administrative expense, in this administratively insolvent case, would effectively force administrative claimants to fund the liquidation of a non-priority unsecured claim (while not doing the same for other claims). See Opp. (dkt.570), p.9:11-17. Like all creditors, Barrett is prejudiced by L&B's bankruptcy case, but as the saying goes, "you can't get blood from a stone." Moreover, instead of being elevated, there is a substantial possibility that Barrett's claim would be subordinated under 11 U.S.C. 502(e)(1) or 510(c), which would make any pre-payment of his indemnity claims, at the expense of other creditors and administrative claimants, particularly inappropriate. See Opp. (dkt.570), pp. 7:21-8:13 & nn.6-7 and pp.9:18-12:2 & n.9.

Of course, this Bankruptcy Court is mindful of the possibility that the State Courts might hold that L&B is so indispensable to the *Pimentel* litigation that such litigation cannot proceed without L&B (see Reply, dkt.573, p.3:3-17), and, in that hypothetical situation, evidence *theoretically* could become stale or there could be other prejudice to Mr. Pimentel, Barrett, and possibly others. But, again, all parties remain free to subpoena witnesses, and in addition the State Courts may well be able to bifurcate issues or proceed in other ways. Therefore, Barrett has not established a likelihood of any *actual* prejudice; and, in any event, on the record before this Bankruptcy Court there is far greater risk of prejudice to the bankruptcy estate, its fiduciaries, and all other creditors if the R/S Motion were to be granted.

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Hearing Room 1545

1:00 PM

CONT...

Layfield & Barrett, APC

Chapter 11

For all of the foregoing reasons and the reasons stated in the Trustee's opposition papers, especially the potential harm to other creditors and administrative claimants and the "impact on the parties and the 'balance of hurt,'" the tentative ruling is to deny the R/S Motion. See Reply, p.5 n.2 (quoting, *inter alia*, 7th and 12th *Curtis* factors).

Proposed order: The Trustee is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

(2) Deadlines/dates. The L&B case was filed as an involuntary chapter 7 on 8/3/17 and converted to chapter 11 on 8/11/17 (L&B dkt. 25). The Lay-Invol case was filed as an involuntary chapter 7 case on 5/21/18 and an order for relief was entered on 12/12/18 (Lay-Invol dkt. 160, 161).

- (a) L&B Bar date: 2/5/18 (timely served, L&B dkt. 133, 157)
- (b) Lay-Invol Bar date: 4/12/19 (timely served, Lay-Invol dkt.180)
- (c) L&B Plan/Disclosure Statement*: TBD. Do not file or serve until further order of this Court.
- (d) Continued status conference: 8/3/21 at 11:00 a.m., concurrent with other matters. No written status report required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see the Posted Procedures of Judge Bason (available at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's Procedures, **hearings are now simultaneously (1) IN PERSON in the courtroom, (2) via ZOOMGOV video, and (3) via ZOOMGOV telephone**. You are free to choose any of these options, except that evidentiary hearings/trials must be in person in the courtroom (unless otherwise ordered). You do not need to call Chambers for advance approval

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1:00 PM

CONT... Layfield & Barrett, APC

Chapter 11

or notice. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Layfield & Barrett, APC Pro Se

Movant(s):

Layfield & Barrett, APC Pro Se

Trustee(s):

Richard Pachulski (TR) Represented By
Malhar S Pagay
James KT Hunter